

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HENRY O'HARA,

Plaintiff(s)

vs.

ANTHONY BRIGANO, Warden,

Defendant(s)

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Case Number: 1:03cv52-SJD-TSH

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on December 5, 2005 Report and Recommendations (Doc. 24). Subsequently, the plaintiff filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2254 (Doc. 1) is DENIED with prejudice.

A certificate of appealability should not issue with respect to the constitutional claims alleged in Grounds Three, Four and Six through Nine of the petition, which this Court has concluded are barred from review on waiver grounds, because under the first prong of the two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling. A certificate of

appealability also should not issue with respect to the remaining claims alleged in Grounds One, Two and Five of the petition, which were addressed on the merits herein, because petitioner has failed to make a substantial showing of the denial of a constitutional right based o these claims. *See* 28 U.S.C. §2253 (c); Fed.R.App.P.22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation would not be taken in “good faith,” and therefore DENIES petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed.R.App.P.24(a); *Kincade v. Sparkman*, 117F.3d 949,952 (6th Circuit 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge